

002035**DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO****DATE:****333
11/18****EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION****September 29, 2008****SUBJECT: Sale of City-Owned Property****GENERAL CONTRACT INFORMATION**

Recommended Consultant: Not Applicable

Amount of this Action: Not Applicable

SUBCONSULTANT PARTICIPATION

There is no subconsultant activity associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity Required:

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

ADDITIONAL COMMENTS

This action is to adopt a resolution authorizing the sale of City-owned land to Anna Avenue Associates.


Beryl Rayford

EOC Program Manager by: MM-J

002037		REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMB (FOR AUDITOR'S USE) 333 11/18			
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): Real Estate Assets Department		September 15, 2008			
4. SUBJECT: <p style="text-align: center;">Sale of City Owned Property</p>							
5. FOR INFORMATION, CONTACT (NAME & MAIL STA.) LANE MACKENZIE, (619) 236-6050, 51a		6. SECONDARY CONTACT DAVID YEARGAIN, (619) 236-6721		7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION" HAS BEEN COMPLETED ON PAGE 2: <input type="checkbox"/>			
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND				9. ADDITIONAL INFORMATION / ESTIMATED COST: Cost: None. \$39,600 deposited to Capital Outlay Disburse Fund No. 302453, Revenue Fund No. Job: 923381 7 8335. Thomas Guide Page: 1268-E3			
DEPT.							
ORGANIZATION							
OBJECT ACCOUNT							
JOB ORDER							
C.I.P. NUMBER							
AMOUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	9/15/08	8	DEPUTY CHIEF	<i>[Signature]</i>	10/15/08
2	CFO/FINANCIAL MANAGEMENT	<i>[Signature]</i>	10/8/08	9	CITY ATTORNEY	<i>[Signature]</i>	10/24/08
3	CONTROLLER	<i>[Signature]</i>	10/13/08	10	ORIGINATING DEPARTMENT	<i>[Signature]</i>	10/28/08
4	EOCP/MEMO 5-3-95	<i>[Signature]</i>	9/29/08	11			
5	EAS	<i>[Signature]</i>	9/17/08	MGR. DOCKET COORD: <i>[Signature]</i> 11/4/08 COUNCIL REP.			
6	LIAISON OFFICE	<i>[Signature]</i>	10/14/08	RULES COMMITTEE <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <i>[Signature]</i> <input type="checkbox"/> REFER TO: _____ DATE: 11/18/08			
7							
11. PREPARATION OF: <input type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
Authorizing the Mayor to 1) execute an easement deed, form of which is attached, for conveyance of the 2,920 square foot underground easement to SDG&E; 2) execute a Real Estate Purchase and Sale Agreement, form of which is attached; 3) execute a grant deed, form of which is attached, for conveyance of the 30,200 square foot parcel in fee title to the Anna Avenue Associates, LLC.; and 4) make any non-material changes to the attached deed and Real Estate Purchase and Sale Agreement. Authorizing the <u>Comptroller</u> to accept \$14,600 from San Diego Gas & Electric Co. and accept \$25,000 from Anna Avenue Associates, LLC and deposit \$14,600 and \$25,000 into: Capital Outlay Fund 302453. Total: \$39,600.							
11A. MANAGER'S RECOMMENDATIONS: <p style="text-align: center;">Approve the resolutions</p>							
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.) <u>COUNCIL DISTRICT(S):</u> 6 <u>COMMUNITY AREA(S):</u> MORENA AREA <u>ENVIRONMENTAL IMPACT:</u> This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15312. <u>ACTION REQUESTED BY:</u> Real Estate Assets Department <u>DESCRIPTIVE LOCATION:</u> Property is located west of Mid City-MTDB and AMTRAK railroad right of way, north of the San Diego River Levy and east of Pacific Highway. <u>VALUE:</u> Staff has approved an appraised value of \$25,000 for the land and \$14,600 for the value of the easement. <u>HANDLING: DO NOT RECORD:</u> Return documents to Real Estate Assets Department, Attention: David Yeargain, M.S. 51A for further handling.							

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED:

ATTENTION: Council President and City Council

ORIGINATING DEPT: Real Estate Assets

SUBJECT: Sale of City Owned Property to Anna Avenue Associates, LLC

COUNCIL DISTRICT: 6

STAFF CONTACT: Lane MacKenzie (619-236-6050)

REQUESTED ACTION:

Adopt a Resolution authorizing the sale of City owned land to Anna Avenue Associates.

STAFF RECOMMENDATION:

Staff recommends adopting the Resolution.

EXECUTIVE SUMMARY:

SDG&E recently installed the Otay-Metro Power Link underground electric transmission line. Through inadvertence, a section of the line was installed under a portion of unimproved City land located in the Linda Vista area, adjacent to MTS railway and Anna Avenue. SDG&E will require an easement from the City for the future maintenance and repair, etc. of the line.

In conjunction with an application for a street vacation, Anna Avenue Associates, has offered to purchase of City property locate west of Mid City–MTDB and AMTRAK railroad right of way, north of the San Diego River Levy and east of Pacific Highway. The three (3) parcel site, (APN 436-660-09, 10, & 34) consisting of 30,200 square feet (.69 acres) is encumbered with a complex series of intertwined utility easements. Because of unusual limitations and encumbrances, the property cannot be improved with any buildings or structures. The only practical use the property is for surface vehicle parking. Anna Avenue Associates, LLC, the adjacent property owner, houses John Smith's Grading Co., who proposes to use this area for parking construction vehicles. Anna Avenue Associates, LLC proposes to make significant improvements to the property, including regrading for access, to correct drainage and improvements allowing for fire equipment access and turn around.

FISCAL CONSIDERATIONS:

\$25,000 to the City for sale of property deposited into General Capital Outlay Fund 302453.

\$14,600 for sale of easement to San Diego Gas & Electric Co. deposited into General Capital Outlay Fund 302453.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None

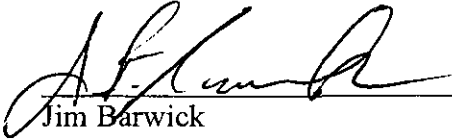
002040

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

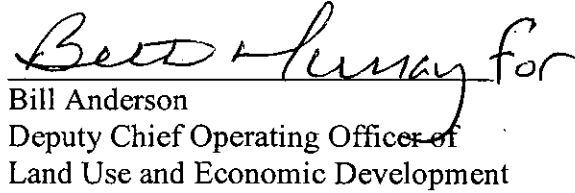
None

KEY STAKEHOLDS & PROJECTED IMPACTS (if applicable):

Sale of excess City land to benefit the Capital Outlay Fund.



Jim Barwick
Real Estate Assets Director



Bill Anderson
Deputy Chief Operating Officer of
Land Use and Economic Development

Attachments:

1. Acquisition Drawing
2. Legal Description
3. Purchase & Sale Agreement

2D 3D

FRIARS RD.

(APPROX. LOCATION OF
UNDERGROUND ELECTRIC)

MTS
RR
(no street view)

SUBJECT CITY PARCEL

ANNA AVE.

PACIFIC
HWY.

ANNA AVE.

Microsoft
Virtual Earth™

© 2007 Microsoft Corporation © 2007 Pictometry International Co.

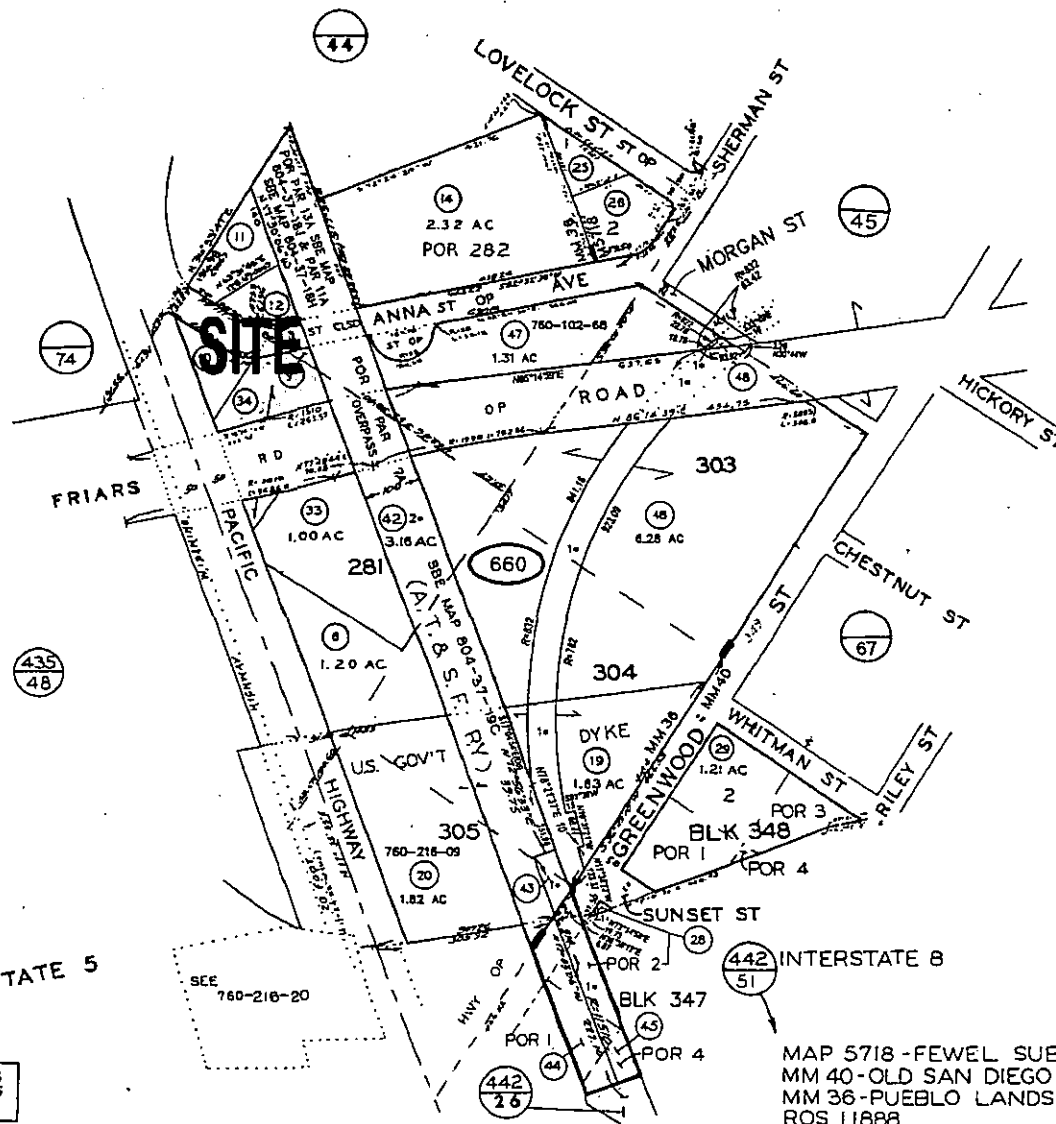
25

SCALE IN 1/10 OF AN INCH

08

436-66

1" = 200'



CHANGES			
BLK	OLD	NEW	YR CUT
	110-12	90	75 100%
		ALL	76 105%
660	35-07	41	
	34-23	76	242%
	38-40	98	249%
	39	41-43	95 160%
660	410	5445	00 485%
	41	46-48	00 155%

1. M.T.B.D. R/W
2. 760-218-90 POR
-91

PALLAMARY & ASSOCIATES

02-1025



SAN DIEGO COUNTY
ASSESSOR'S MAP.
BOOK 436 PAGE 66

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

MAP 5718 -FEWEL SUB
MM 40-OLD SAN DIEGO
MM 36-PUEBLO LANDS
ROS 11888

OCT 05 1999

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS
DESIGNEE, TO EXECUTE AN EASEMENT DEED IN FAVOR
OF SAN DIEGO GAS & ELECTRIC, CONVEYING AN
UNDERGROUND EASEMENT TO SAN DIEGO GAS AND
ELECTRIC COMPANY AND A REAL ESTATE PURCHASE
AND SALES AGREEMENT TO ANNA AVENUE
ASSOCIATES.

WHEREAS, San Diego Gas & Electric Company [SDG&E] is requesting The City of
San Diego [City] execute an easement deed for conveyance of a 2,920 square foot underground
easement to SDG&E; and

WHEREAS, SDG&E recently installed the Otay-Metro Power Link underground electric
transmission line and through inadvertence, a section of the line was installed under a portion of
unimproved City land located in the Linda Vista area, adjacent to MTS railway and Anna
Avenue; and

WHEREAS, SDG&E requires an easement from the City for future repairs and
maintenance; and

WHEREAS, the staff has approved an appraisal by Ted Hendrickson, M.A.I. of \$14,600
for the easement; and

WHEREAS, in conjunction with an application for a street vacation, Anna Avenue
Associates, LLC [Anna Avenue] has offered to purchase City property located west of Mid City
– MTDB and AMTRAK Railway right of way, north of the San Diego River Levy and east of
Pacific Highway; and

WHEREAS, the three parcel site (APN 436-660-09, 10 and 34) consisting of 30,200 square feet (.69 acres) is encumbered with a complex series of intertwined utility easements which will include the above recommended easement if approved. Because of unusual limitations and encumbrances, the property cannot be improved with any buildings or structures. Therefore, the only practical use for the property is for surface vehicle parking; and

WHEREAS, the staff has approved an appraisal by Ted Hendrickson, M.A.I. of \$25,000 for the land; and

WHEREAS, Anna Avenue proposes to make significant improvements to the property, including upgrading for access; to correct drainage and improvements allowing for fire equipment access and turn around; NOW, THEREFORE,


BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized to execute a grant of easement, which is attached, for and on behalf of The City of San Diego, conveying to SDG&E an easement for the purpose of a 2,920 square foot underground easement, more particularly described in said Easement on file in the office of the City Clerk as document No. RR-_____.

BE IT FURTHER RESOLVED, that the Mayor, or his designee, is authorized to execute a Real Estate Purchase and Sale Agreement, which is attached; and execute a Grant Deed, which is attached, for conveyance of 30,200 square foot parcel [APN 436-660-09, 10, and 34] in fee title to Anna Avenue, more particularly described in said Grant Deed on file in the office of the City Clerk as Document No. RR-_____.

BE IT FURTHER RESOLVED, that the City Comptroller is authorized to accept \$14,600 from San Diego Gas & Electric and accept \$25,000 from Anna Avenue Associates, LLC and deposit \$14,600 and \$25,000 into Capital Outlay Fund 302453 for a total of \$39,600.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Todd Franklin Bradley
Deputy City Attorney

TFB:bas
10/16/08
Or.Dept: READ
R-2009-531
MMS #6377

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

REAL ESTATE PURCHASE AND SALE AGREEMENT**[Unimproved land APN 436-660-09, 10 & 34]**

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("SELLER"), and ANNA AVENUE ASSOCIATES, LLC, (PURCHASER"), to be effective upon execution of the parties, final passage of a resolution by the San Diego City Council authorizing this Agreement, and approval by the San Diego City Attorney ("Effective Date"), as follows:

1. **Purchase and Sale; Property.** Under the terms and conditions of this Agreement, SELLER shall sell and convey to PURCHASER, and PURCHASER shall purchase from SELLER the real property ("Property") consisting of approximately 30,200 square feet, located west of Mid City-MTDB and AMTRAK railroad right of way, north of the San Diego River Levy and east of Pacific Highway in the City of San Diego, County of San Diego, State of California, described as APN 436-660-09, 10, 34, together with all rights and appurtenances pertaining to the land, and as more particularly described in Exhibit A, attached hereto. **Escrow:** SELLER shall open escrow with Chicago Title (the "Title Company") within three (3) business days after the Effective Date.
2. **Purchase Price.** The purchase price of the Property ("Purchase Price") shall be the appraised value of the fee simple interest in the Property, which is Twenty-Five Thousand Dollars (\$25,000), payable at the closing of the transaction contemplated by this Agreement (the "Closing").
3. **Closing.** The Closing shall be held at the offices of the Title Company on or before a date (the "Closing Date") that is mutually satisfactory to both the PURCHASER and the SELLER, but in no event later than ninety (90) calendar days after the Effective Date.
 - a. At the Closing, PURCHASER shall execute (where applicable) and deliver to the Title Company for delivery to SELLER, or procure the delivery to SELLER the Purchase Price and any other instruments and documents reasonably required by SELLER or the Title Company to evidence the authority of the PURCHASER and to consummate the transactions contemplated by this Agreement. The Purchase Price shall be immediately paid to SELLER.
 - b. All ad valorem taxes and special taxes or assessments levied or assessed against the Property for the year of the Closing, if any, shall be prorated at the Closing effective as of the Closing Date. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall use the tax rate and the assessed valuation for the preceding tax year. The prorating of ad valorem taxes shall be subject to later adjustment once the actual tax statements for the year of Closing have been received, which agreement to re-prorate taxes shall survive the Closing. However, SELLER shall

not be responsible for any increase in ad valorem taxes resulting from improvements to the Property made by PURCHASER after the Closing Date.

4. **Title.** At the Closing, SELLER shall convey good and indefeasible fee simple title to the Property to PURCHASER or PURCHASER'S nominee by a "Grant Deed" in the form attached hereto as EXHIBIT B (the "Grant Deed"), subject to zoning and building laws and ordinances, and acts done or suffered by PURCHASER, or claims made by, through, or under PURCHASER.
5. **Escrow Costs.** PURCHASER shall pay all costs of escrow, including without limitation title insurance policy costs, recording fees, escrow fees, and any other fees associated with the escrow.
6. **Title Insurance.** PURCHASER shall pay the standard premium for SELLER'S title insurance.
7. **No Leasing by SELLER.** SELLER represents and warrants that as of the Effective Date, there are no leases of all or any portion of the Property. SELLER shall not enter into any new leases with respect to the Property after the Effective Date.
8. **Loss or Damages to Property or Improvements.** Loss or damage to the Property occurring prior to the Closing shall be at SELLER'S risk. In the event of loss or damage to the Property prior to the Closing, SELLER shall take all actions necessary to prevent or eliminate a condition of danger or nuisance. Use of insurance proceeds for this purpose is at the discretion of SELLER. However, SELLER has no obligation to provide any insurance coverage for the Property after the Closing.
6. **Acceptance of Environmental Conditions.**
 - a. PURCHASER acknowledges that it is purchasing the Property on an "as-is" basis with no representations or warranties of any kind, expressed or implied, either oral or written, made by SELLER or any agent or representative of SELLER with respect to any structural or physical condition of the Property, or with respect to the existence or absence of toxic or hazardous materials, substances or wastes in, on, under or affecting the Property. SELLER has made and makes no warranty or representation regarding the fitness of the Property, or any portion of the Property, as to any particular use, quality or merchantability. To the best of its actual knowledge, without any duty of inquiry or investigation, SELLER shall disclose to PURCHASER any findings of the Property and its operations. SELLER shall not be liable or bound in any manner by any warranties, either expressed or implied, guarantees, promises, statements, representations or information pertaining to the Property made or furnished by any real estate agent, broker, employee, servant or other person representing or purporting to represent SELLER.

- b. PURCHASER shall comply with any and all laws, regulations, and/or orders in effect or which may be promulgated with respect to the discharge and/or removal of any Hazardous Substances, to pay or cause other parties to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any Hazardous Substances. If any Hazardous Substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then PURCHASER shall cause the remediation and/or removal of the Hazardous Substances to be completed to achieve compliance with law. PURCHASER shall be solely responsible for all remediation and removal expenses.
- c. PURCHASER shall not knowingly use the Property or allow the Property to be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release or disposal of any Hazardous Substances, except in accordance with law.
- d. PURCHASER shall pay all costs of compliance with all applicable governmental requirements in the removal of any asbestos and lead-based paint, to the extent that these costs are not paid by the Federal Government.

7. Warranties, Representations and Covenants of SELLER. SELLER hereby represents and warrants to PURCHASER that:

- a. To the best of SELLER'S knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign;
- b. Prior to the Closing, SELLER will not alter the physical condition of the Property, and shall maintain the Property in good condition and state of repair and maintenance, and shall perform all of its obligations under any service contracts or other contracts affecting the Property;
- c. Prior to the Closing, SELLER shall not do anything to impair title to any of the Property; except for the additional utility easement to SDG&E.
- d. To the best of SELLER'S knowledge, all utilities, including gas, electricity, water, sewage and telephone, are available to the Property and all such items are in good working order;
- e. To the best of SELLER'S knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with or breach any bond, note, evidence of indebtedness, contract, lease, or other agreement or instrument to which the Property may be bound; and

- f. Prior to the Closing, SELLER shall, upon learning of any fact or condition which would cause any of the warranties and representations in this section to not be true as of the Closing, immediately notify PURCHASER of such fact or condition.

8. **Existing Structures and Encroachments.** SELLER and PURCHASER acknowledge that there are structures on the Property ("Existing Structures"), as well as buildings and structures that encroach on the Property from adjacent parcels ("Encroachments"), that will need to be removed prior to PURCHASER'S redevelopment of the Property. Prior to the Closing, SELLER shall take all steps necessary to inform the owners of the Encroachments that their encroachment is not accepted by SELLER and that the Encroachments must be removed within the next three (3) years following the Effective Date. PURCHASER agrees that the Encroachments do not need to be removed prior to the Closing. PURCHASER shall cause the demolition and removal of the Existing Structures and the Encroachments at the time the Property is redeveloped, which is expected to occur within three (3) years after the Closing. PURCHASER shall pay all costs incurred to effect the demolition and removal of the Existing Structures and the Encroachments.
9. **Release.** With the exception of any claims that may arise associated with sections 10 (No Leasing by SELLER), 11 (Loss or Damages to Property or Improvements), 13 (Warranties, Representations and Covenants of SELLER), and 14 (Existing Encroachments) of this Agreement, and claims arising from SELLER'S fraud or intentional misrepresentation, effective from and after the Closing, PURCHASER, for itself, its successors, assignees, representatives, employees, officers, and agents, releases and forever discharges SELLER, its elected officials, officers, representatives, agents, employees, successors in interest and assigns, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of service, expenses and compensation of any nature whatsoever, whether based on tort, contract, violation of statutory duties, or other theory of recovery, and whether for compensation or punitive damages, injunctive relief or mandamus, or other equitable remedies which PURCHASER now has, or which may later accrue or be acquired, on account of, or in any way growing out of, or which are the subject of this Agreement, the Property, or the condition of the Property, including without limitation, any and all known or unknown claims resulting from the alleged acts or omissions of SELLER, its elected officials, officers, representatives, agents or employees.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

10. **Section 1542 Waiver.** PURCHASER acknowledges and agrees that the release of liability provision set forth above is a general release, and with the exception of any claims that may arise associated with Section 10 (No Leasing by SELLER), Section 11 (Loss or Damages to Property or Improvements), Section 13 (Warranties, Representations and Covenants of SELLER), and Section 14 (Existing Encroachments) of this Agreement, and matters arising from SELLER'S fraud or intentional misrepresentation, further expressly waives and assumes the risk of any and all claims against SELLER arising from this Agreement, the Property, or the condition of the Property and which exist as of the Effective Date but of which PURCHASER does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect PURCHASER'S decision to enter into this Agreement. PURCHASER expressly waives, as demonstrated by the signature set forth immediately below, the benefits and provisions of Section 1542 of the California Civil Code, and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

WAIVED BY: ANNA AVENUE ASSOCIATES, LLC

BY: _____
Name: _____
Title: _____

11. **No Real Estate Commission.** PURCHASER and SELLER represent, warrant and agree that no real estate commission, finder's fee or broker's fee has been or will be incurred in connection with the sale of the Property. The rights and obligations of PURCHASER and SELLER pursuant to this section shall survive the Closing or termination of this Agreement.
12. **Default and Remedies.**
- a. **SELLER'S Default; PURCHASER'S Remedies.** If SELLER defaults on its obligations under this Agreement prior to the Closing, PURCHASER may, at its sole option and as its exclusive remedy for such default either (i) terminate this Agreement by written notice to SELLER and the Title Company, or (ii) if SELLER'S default results from its failure to transfer possession and title to the Property to PURCHASER at the Closing, seek and enforce specific performance of this Agreement. If SELLER defaults on its obligations under this Agreement after the

Closing, PURCHASER may seek and enforce any remedy available therefore at law or in equity

- b. **PURCHASER'S Default; SELLER'S Remedies.** If PURCHASER defaults on its obligations under this Agreement, SELLER may terminate this Agreement by written notice delivered to PURCHASER and the Title Company, and/or seek and enforce any other remedy available therefore at law or in equity.
13. **Limited Liability.** SELLER'S liability for damages resulting from or under this Agreement shall be limited to either the Property or to the Purchase Price received by SELLER, and without resort to any other assets of SELLER.
14. **Time of Essence.** Time is of the essence to the performance of each obligation under this Agreement
15. **Interpretation.** This Agreement shall be governed by the laws of the State of California. The section headings are for convenience only and are in no way intended to interpret, define or limit the scope or content of this Agreement. If any party is made up of more than one person or entity, then all are identified in the singular in this Agreement. If any right of approval or consent by a party is provided for in this Agreement, the party shall exercise the right promptly, in good faith and reasonably, unless this Agreement expressly gives such party the right to use its sole discretion. The term "business day" shall mean Monday through Friday, excluding holidays recognized by the State of California.
16. **Amendments.** The terms and provisions of this Agreement shall only be amended pursuant to a written instrument signed by both the SELLER and the PURCHASER.
17. **Successors and Assigns.** The provisions of this Agreement shall inure to and bind the successors and assigns of the parties, except for a bona fide purchaser, not affiliated in any way with PURCHASER.
18. **Assignment.** This Agreement may not be assigned in whole or in part by PURCHASER without SELLER'S prior written consent.
19. **Attorney Fees.** In any action or proceeding to enforce a right or obligation of this Agreement, or of any disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement, or in any way arising from this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs paid or incurred in good faith. The "prevailing party" for the purposes of this Agreement, shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
20. **Notices.** Each notice, waiver, demand, request or other communication required or permitted by this Agreement shall be in writing and deemed to have been properly

given, served and received: (a) if delivered by messenger, when delivered; (b) if mailed, on the third (3rd) business day after deposit in the United States mail, certified or registered, postage prepaid, return receipt requested; (c) telexed, telegraphed or telecopied, six (6) hours after being dispatched if such sixth hour falls on a business day within the hours of 8:00 a.m. through 6:00 p.m. of the time in effect at the place of receipt, or at 8:00 a.m. on the next business day thereafter if such sixth hour is later than 6:00 p.m.; or (d) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier, in every case addressed to the parties to be notified as follows:

SELLER: Director, Real Estate Assets Department
THE CITY OF SAN DIEGO
202 C Street, Ninth Floor
San Diego, CA 92101

With a copy to:

Office of the City Attorney
THE CITY OF SAN DIEGO
1200 Third Avenue, Suite 1100, MS 59
San Diego, CA 92101

PURCHASER: John Smith, Manager
ANNA AVENUE ASSOCIATES, LLC
5216 Anna Avenue00
San Diego, CA 92110

21. **Authority to Contract.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the Mayor or designee, that such authority is valid.

002056

22. **Entire Agreement.** This Agreement represents the entire agreement between the parties for the purchase and sale of the Property, and supersedes all prior negotiations, representations or agreements, either oral or written.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

SELLER:

Date: _____

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: _____

Name: _____

Title: _____

PURCHASER:

Date: _____

ANNA AVENUE ASSOCIATES, LLC

BY: _____

Name: _____

Title: _____

SAN DIEGO CITY COUNCIL AUTHORIZING RESOLUTION NO. R-_____

DATE OF FINAL PASSAGE: _____

APPROVED AS TO FORM AND LEGALITY:

Effective Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____

_____, Deputy City Attorney

EXHIBIT A: LEGAL DESCRIPTION AND PARCEL MAP OF PROPERTY

EXHIBIT B: FORM OF GRANT DEED